

ORDINANCE NO. 26-2004

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING CHAPTER 15.12
OF THE ELK GROVE MUNICIPAL CODE
RELATING TO STORM WATER DRAINAGE SERVICES**

The City Council of the City of Elk Grove does ordain as follows:

SECTION 1. PURPOSE.

The purpose of this ordinance is to amend Chapter 15.12 of the City of Elk Grove Municipal Code in order to comply with federal stormwater regulations and NPDES Municipal Stormwater Permit No. CAS082597, and to provide the County of Sacramento, Environmental Management Division with the necessary authority to conduct inspections and enforcement activities pursuant to the Agreement between the City and the County dated March 17, 2004.

SECTION 2. FINDINGS.

1. One of the requirements of the Municipal Stormwater Permit (NPDES No. CAS0082597) to which the City is a co-permittee is to track, inspect, and ensure compliance with the Stormwater Ordinances at certain commercial and industrial facilities.
2. The Sacramento County Environmental Management Department ("EMD"), as both the state-designated Certified Unified Program Agency ("CUPA") and the environmental health agency for Sacramento County, is currently tracking and inspecting the majority of commercial and industrial facilities subject to the provisions of the Municipal Stormwater Permit.
3. On March 17, 2004, the City Council authorized the City Manager to enter into an Agreement with EMD for fulfilling the NPDES Permit inspection requirements with respect to certain commercial and industrial facilities.
4. Under the Agreement, the City is required to amend the Stormwater Ordinance as necessary to authorize the County EMD to implement the stormwater compliance program for commercial and industrial facilities. The City must make any necessary amendments to the Stormwater Ordinance to the extent necessary to authorize EMD to:
 - a. Conduct all necessary inspections or re-inspections of regulated facilities within the incorporated City area;

- b. Take any necessary enforcement actions as authorized by the Municipal Code and consistent with a City-approved enforcement plan;
 - c. Investigate and follow-up referred complaints at eligible facilities;
 - d. Establish and collect fees necessary to recover program implementation costs.
5. The term of the Agreement is July 1, 2004 through June 30, 2010, unless sooner terminated, or extended by the City and County.
6. The purpose of this ordinance is to fulfill the requirements of the Agreement between the City and Sacramento County, authorized by the City Council on March 17, 2004, whereby the County shall assume responsibility for providing tracking, inspection, and enforcement of the City's Stormwater Ordinance with respect to commercial and industrial facilities within the incorporated City area as required by the Municipal Stormwater Permit.
7. Although the NPDES Permit and the Agreement between the City and County do not require inspections to commence on July 1, 2004, County EMD has threatened to forego inspections on certain industrial facilities within the City's jurisdiction, if those facilities had been scheduled to be inspected after July 1, 2004, and until such time as the City adopts these revisions to the Stormwater Ordinance. Although the County is required to conduct such inspections at least once prior to June 30, 2007, the County has steadfastly maintained that it will be unable to reschedule any such inspections missed, unless the City adopts this urgency ordinance.
8. On June 28, 2004, the Central Valley Regional Water Quality Control Board issued a Notice of Violation to the City of Elk Grove. In the Notice, the Regional Board alleged that the City had failed to effectively implement its stormwater management program, and ordered the City to take several steps to bring the program into compliance with the NPDES Permit. The Notice of Violation alleged that the City's Stormwater Ordinance does not provide the proper authority necessary under the NPDES Permit, and ordered the City to undertake a review of the Ordinance with respect to the NPDES Permit, and make any revisions necessary. Although the Regional Board has since acknowledged that the City's Stormwater Ordinance enforcement provisions are sufficient under the NPDES Permit, City staff has reviewed the Ordinance, and identified certain revisions to other portions of the Stormwater Ordinance which are necessary under the NPDES Permit. In particular, the necessary revisions include a requirement that covered individuals and entities maintain best management practices, and conduct various reporting activities.

9. The provisions of the Elk Grove Municipal Code relating to reduction of pollutants in stormwater and inspection and monitoring must be revised in order for the City to comply with the terms of the Municipal Stormwater Permit, with federal stormwater regulations, and to allow the County EMD to conduct inspections and enforcement activities against certain commercial and industrial facilities within the City's jurisdiction pursuant to the March 17, 2004 Agreement between the City and County.

SECTION 3. AMENDMENT. Chapter 15.12 "Stormwater Management and Discharge Control," of the Elk Grove Municipal Code, is amended to read as follows:

Chapter 15.12

STORMWATER MANAGEMENT AND DISCHARGE CONTROL

Article 1 General Provisions

- 15.12.010 Findings.
- 15.12.020 Purpose and Intent.
- 15.12.030 Definitions.
- 15.12.035 Construction.
- 15.12.040 Applicability.
- 15.12.050 Regulatory Consistency.
- 15.12.060 Compliance Disclaimer.
- 15.12.070 Severability.
- 15.12.080 Administration.
- 15.12.090 Disclaimer of Liability.

Article 2 Prohibited Discharges

- 15.12.100 Prohibited Discharge.
- 15.12.110 Exceptions to Discharge Prohibition.
- 15.12.120 Exception to Otherwise Applicable Exemptions.
- 15.12.130 General Discharge Prohibition.
- 15.12.140 Threatened Prohibited Discharge.
- 15.12.150 Illicit Connections Prohibited.
- 15.12.160 Negligence or Intent Not Required.

Article 3 Reduction of Pollutants in Stormwater

- 15.12.200 General Requirements.
- 15.12.210 Containment and Notification of Spills.
- 15.12.220 Best Management Practices.
- 15.12.230 Administrative Rules and Regulations.
- 15.12.235 BMP Maintenance Requirements.

Article 4 Inspection, Monitoring and Reporting

- 15.12.300 Scope of Inspections.
- 15.12.330 Reporting Requirements

- 15.12.350 Fees.
- Article 5 Enforcement
- 15.12.400 Notice of Non-Compliance.
- 15.12.410 Administrative Compliance Orders.
- 15.12.420 Cease and Desist Orders.
- 15.12.430 Delivery of Notice.
- 15.12.440 Administrative Appeals.
- 15.12.450 Nuisance and Abatement.
- 15.12.460 Civil Penalties.
- 15.12.470 Criminal Penalties.
- 15.12.480 Miscellaneous Enforcement Provisions.

- Article 6 Recovery of Cost of Abatement
- 15.12.500 Costs of Abatement – Confirmation.
- 15.12.510 Costs – Assessments.
- 15.12.520 Treble Costs.
- 15.12.530 Hearing of Protests.
- 15.12.540 Assessment for Summary Abatement.
- 15.12.550 Time for Contest of Assessment.
- 15.12.560 Filing Copy of Report with County Auditor.

- Article 7 Commercial and Industrial Facilities
- 15.12.600 Findings.
- 15.12.610 Purpose and Intent.
- 15.12.620 Delegation of Authority to County EMD
- 15.12.630 Expiration of this Article

Article 1 General Provisions

15.12.010 Findings.

a. The Federal Clean Water Act provides for the regulation and reduction of pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System requirements to stormwater and urban runoff discharge into the City stormwater conveyance system.

b. Stormwater flows from individual properties to the City stormwater conveyance system and then ultimately to the waters of the United States.

c. The City is a co-permittee under the Waste Discharge Requirements for County of Sacramento, cities of Sacramento, Folsom, Citrus Heights, Elk Grove, Rancho Cordova, and Galt Area-Wide Storm Water Discharges From Municipal Separate Storm Sewer Systems, which also serves as a National Pollutant Discharge Elimination System Permit under the Federal Clean Water Act (NPDES No. CA0082597). As a co-permittee, the City is required to possess the necessary legal

authority, and to implement appropriate procedures, to regulate the entry of pollutants and non-stormwater discharges into the City stormwater conveyance system.

d. The Municipal Storm Water Permit requires the City effectively to prohibit non-stormwater discharges into the City stormwater conveyance system except as otherwise permitted by Federal law.

e. The City Council finds in this regard that the provisions of this Chapter are necessary to provide the City with the legal authority necessary to implement and otherwise comply with the requirements of its Municipal Storm Water Permit.

15.12.020 Purpose and Intent.

a. This Chapter is adopted pursuant to Article XI, Section 7 of the California Constitution which authorizes the City to exercise its police power to protect and promote the public health, safety and general welfare. While stormwater runoff is one step in the natural cycle of water, human activities, including, but not limited to, agriculture, construction, manufacturing and the operation of an urban infrastructure, may result in undesirable discharges of pollutants and certain sediments. Such discharges may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States. The purpose of this Chapter is to protect and enhance the water quality of watercourses, water bodies and wetlands within the unincorporated area of the City in a manner consistent with the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and Municipal Discharge Permit #CA0082597 by controlling the contribution of urban pollutants to stormwater runoff which enters the City stormwater conveyance system.

b. It is the intent of the City Council in adopting this Chapter to provide the City with the legal authority to accomplish the following goals:

1. To reduce the discharge of pollutants in stormwater to the maximum extent practicable;
2. To effectively prohibit non-stormwater discharges into the City stormwater conveyance system;
3. To comply with the requirements of the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and NPDES Municipal Storm Water Discharge Permit #CA0082597 as they apply to the discharge of pollutants into and from the City stormwater conveyance system;
4. To fully implement the Comprehensive Stormwater Management Program as approved by the Regional Board;
5. To protect the physical integrity and function of the City stormwater conveyance system from the effects of pollutants and materials other than stormwater;

6. To prevent the contamination of groundwater as a result of pollution migration from the City stormwater conveyance system;

7. To promote cost effective management and beneficial use of sediments in the City stormwater conveyance system;

8. To protect the health and safety of maintenance personnel and the public who may be exposed to pollutants in the City stormwater conveyance system;

9. To provide for the recovery of regulatory costs incurred by the City in the implementation of its stormwater drainage program, including, but not limited to, enforcement activities, inspections, investigations, sampling and monitoring; and

10. To establish appropriate enforcement procedures and penalties for violations of the provisions of this Chapter.

15.12.030 Definitions.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the United States Environmental Protection Agency, as amended, and which are not specifically defined in this Chapter shall, when used in this Chapter, have the same meaning as set forth in said Act or regulation.

As used in this Chapter, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise.

a. "Administrator" means the Administrator of the City's Department of Public Works and his or her designees.

b. "Best Management Practices (BMP)" means schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of pollutants directly or indirectly to waters of the United States. BMPs shall also be defined to include structural controls, treatment controls, training requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

c. "City" means the City of Elk Grove.

d. "City Council" means the City Council of the City of Elk Grove.

e. "County" means the County of Sacramento.

f. "City Stormwater Conveyance System" means those public and natural facilities within the City which are owned, operated, maintained or controlled by the City by which stormwater may be conveyed to waters of the United States, including, but not

limited to, any roads with drainage systems, municipal streets, catch basins, water quality basins, detention basins, constructed wetlands, natural and artificial channels, aqueducts, canyons, stream beds, gullies, curbs, gutters, ditches, sumps, pumping stations, and storm drains. The City stormwater conveyance system includes natural creeks and small streams which are also defined as receiving waters by the Municipal Storm Water Permit, but does not include the Sacramento River, American River, Cosumnes River, Mokelumne River, or navigable waterways of the Delta.

g. "Discharge" mean the release or placement of any material into the City stormwater conveyance system, including, but not limited to, stormwater, wastewater, solid materials, liquids, hazardous waste, raw materials, debris, litter or any other substance.

h. "Illicit connection" means any physical connection to the City stormwater conveyance system which is not expressly authorized by the City.

i. "Implementing Agency" means the agency or department designated by the Administrator to enforce the provisions of this Chapter with respect to a particular site, facility or industry category.

j. "Industry or industrial activity" means any service, business, enterprise, or any other activity conducted by any person for the purpose of monetary or other compensation.

k. "Material" means any substance, including, but not limited to, raw materials, finished products, garbage and debris, lawn clippings, leaves and other vegetation, biological and fecal waste, sediment and sludge, oil and grease, gasoline, paints, solvents, cleaners and any fluid or solid containing chemicals.

l. "Municipal Storm Water Permit" means NPDES Permit # CA0082597, including any amendments thereto or successor permit, issued by the Regional Board to the County and the cities of Folsom, Galt, Sacramento, Citrus Heights, Elk Grove and Rancho Cordova.

m. "National Pollution Discharge Elimination System Permit or NPDES Permit" means a permit issued by either the Regional Board or the State Water Resources Control Board pursuant to Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code to control discharges from point sources to waters of the United States.

n. "Non-stormwater discharge" means any discharge to the City stormwater conveyance system or directly to the Sacramento River, the Cosumnes River, the Mokelumne River, the navigable waters of the Delta, or the American River which is not composed exclusively of stormwater.

o. "Person" means any natural person as well as any corporation, partnership, public agency, trust, estate, cooperative association, joint venture, business

entity or other similar entity, or the agent, employee or representative of any of the above.

p. "Pollutant" means any contaminant or other substance which, as determined by the Administrator, is discharged or has a reasonable potential to be discharged in sufficient quantities or concentrations to cause exceedance of receiving water limitations defined in Section C. 1. of the Municipal Storm Water Permit, or any successor section, or otherwise cause a violation of the Municipal Storm Water Permit. Pollutant may include, but is not limited to, solid waste, sewage, garbage, medical waste, wrecked or discarded equipment, radioactive material, dredged soil, rock, sand, industrial waste, feces, fecal coliform, fecal streptococcus, enterococcus, volatile organic carbon, surfactants, oil and grease, petroleum hydrocarbon, organic solvents, metals, phenols, pesticides, nutrients, suspended or settleable solids, materials causing an increase in biochemical or chemical oxygen or total organic carbon, substances which alter pH, and those pollutants defined in Section 1362(6) of the Federal Clean Water Act.

q. "Potential user" means any person who by nature of the enterprise, activity or industry in which such person is engaged, or by the use, possession or ownership of specified types of equipment, is determined by the Administrator to generate or have the capacity to generate wastes or wastewater which have significant potential to be discharged to the City stormwater conveyance system.

r. "Premises" means any building, lot, parcel or land, or portion thereof, whether improved or unimproved.

s. "Prohibited discharge" means any non-stormwater discharge to the City stormwater conveyance system or directly to the Sacramento River, the Cosumnes River, the Mokelumne River, navigable waters of the Delta, or the American River, which is not otherwise specifically authorized by this Chapter, the Regional Board, State or Federal law, or an NPDES permit.

t. "Receiving water limitations" means those restrictions defined and listed in Section C.1. of the Municipal Storm Water Permit or any successor section.

u. "Receiving waters" means surface bodies of water, as defined by the Municipal Storm Water Permit, including, but not limited to, creeks and rivers, which serve as discharge points for the City stormwater conveyance system.

v. "Regional board" means the California Regional Water Quality Control Board, Central Valley Region.

w. State General Construction Activity Permit shall mean the State Water Resources Control Board's Water Quality Order No. 99-08-DWQ, National Pollution Discharge Elimination System (NPDES) General Permit No. CAS000002 Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated With Construction Activity, and any successor documents.

x. "State General Industrial Activity Permit" shall mean the State Water Resources Control Board's Water Quality Order No. 97-03-DWQ, National Pollution Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities, and any successor document.

y. "Stormwater" means surface runoff and drainage resulting from storm events and snow melt.

z. "Subject Activity" means any industrial activity which is determined by the Administrator to discharge or have the potential to discharge pollutants into stormwater or non-stormwater in quantities or concentrations which may cause exceedance of receiving water limitations, or for which a requirement has been imposed by the state or federal government on the City to conduct stormwater regulatory activities focused on the activity.

aa. "Threatened prohibited discharge" means any condition or activity which does not currently result in a prohibited discharge but is nevertheless determined by the Administrator to be a condition which results in a substantial likelihood of a future prohibited discharge.

bb. "User" means any person who discharges, or causes to discharge, either directly or indirectly, stormwater or any other material into the City stormwater conveyance system.

cc. "Waters of the United States" has the same meaning as set forth in Part 122.2 of Title 40 of the Code of Federal Regulations or any successor provision.

15.12.035 Construction.

The provisions of this Chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and any acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit # CA 0082597 and any amendment, revision or reissuance thereof. In the event of a conflict between this Chapter and any Federal or State law, regulation, order or permit, the requirement which establishes the higher standard for public health and safety shall govern.

15.12.040 Applicability.

The provisions of this Chapter shall be applicable to all users and potential users located within the City and all users that discharge either directly or indirectly into the City stormwater conveyance system. This Chapter shall not be applicable to persons located outside the boundaries of the City if their stormwater or non-stormwater discharge enters a stormwater conveyance facility owned or operated by another public agency which is subject to a valid NPDES Permit for discharges from a municipal separate storm sewer system prior to entering the City stormwater conveyance system.

This Chapter shall not apply to facilities subject to and in compliance with the State General Construction Activity Stormwater Permit and/or the City of Elk Grove Erosion and Sediment Control Ordinance. Non-stormwater discharges at construction sites between one and five acres in size, and which the Administrator determines are in accordance with the non-stormwater discharge standards of the State General Permit for Construction Activity, are considered to be in compliance with this Chapter. This Chapter shall not apply to facilities operated by the State of California or by agencies of the Federal Government.

15.12.050 Regulatory Consistency.

The provisions of this Chapter shall take precedence over and are controlling with respect to any conflicting or inconsistent provisions in this Code.

15.12.060 Compliance Disclaimer.

Compliance by any person with the provisions of this Chapter shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements relating to the control of pollutant discharges or protection of stormwater quality, or both.

15.12.070 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof without regard to whether any other section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter would subsequently be declared to be invalid or unconstitutional.

15.12.080 Administration.

Except as otherwise provided herein, the Administrator shall be responsible for the administration, implementation and enforcement of the provisions of this Chapter. Any powers granted to or duties imposed upon the Administrator may be delegated by the Administrator to other City employees or, upon the approval of the City Council, to employees of other public agencies.

15.12.090 Disclaimer of Liability.

The degree of protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this Chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This Chapter shall not create liability

on the part of the City or any officer or employee thereof for any damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

Article 2

Prohibited Discharges

15.12.100 Prohibited Discharge.

Except as provided in Section 15.12.110, it shall be unlawful for any person to make or cause to be made any non-stormwater discharge into the City stormwater conveyance system or directly to the Sacramento River, American River, Cosumnes River, Mokelumne River, or navigable waters of the Delta.

15.12.110 Exceptions to Discharge Prohibition.

The following discharges to the City stormwater conveyance system are exempt from the otherwise applicable discharge prohibition set forth in Section 15.12.100:

a. Any discharge regulated under a NPDES permit issued to the discharger, and administered by the State pursuant to Chapter 5.5 of Division 7 of the Water Code, provided that any such discharge is in compliance with all requirements of the NPDES permit and all other applicable laws and regulations.

b. Any discharge from any of the following activities provided that any such discharge does not cause or contribute to the violation of any Receiving Water Limitation as determined by the Administrator:

1. Water line flushing;
2. Landscape irrigation;
3. Diverted stream flows;
4. Rising ground waters;
5. Uncontaminated ground water infiltration [as defined in 40 CFR 35.2005(20)] to separate storm sewers;
6. Uncontaminated pumped ground water;
7. Discharges from potable water sources;
8. Foundation drains;
9. Air conditioning condensate;
10. Irrigation water;

11. Springs;
12. Water from crawl space pumps;
13. Footing drains;
14. Lawn watering;
15. Individual residential car washing;
16. Flows from riparian habitats and wetlands;
17. Dechlorinated swimming pool discharges; or
18. Discharges or flows from emergency fire fighting activities.

c. Any discharges which the Administrator or the Regional Board determines in writing are necessary for the protection of public health or safety.

d. Additional categories of non-stormwater discharges which do not cause or contribute to the violation of any Receiving Water Limitation may be accepted from the otherwise applicable prohibition by the Administrator upon approval of the Executive Officer of the Regional Board, as provided in Sections A.3. and D.4.a.1.d. of the Municipal Storm Water Permit, or any successor sections.

15.12.120 Exception to Otherwise Applicable Exemptions.

Notwithstanding the exemptions provided for in Section 15.12.110 above, if the Regional Board or the Administrator determines that a discharge which is otherwise exempt from the prohibition on discharges causes or significantly contributes to the violation of any Receiving Water Limitation or results in the conveyance of significant quantities of pollutants to surface waters, or is otherwise a danger to public health or safety, the Administrator may give written notice to the owner or operator of the facility that the discharge exception shall not apply to the discharge at issue following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of such thirty (30) day period, any such discharge shall be unlawful. Upon finding that any continuance of the discharge poses an immediate significant threat to the environment or to public health and safety, the Administrator may waive the thirty day waiting period and require immediate cessation of the discharge.

15.12.130 General Discharge Prohibition.

It shall be unlawful for any person to discharge, or cause to be discharged, any material to the City stormwater conveyance system which results in, or contributes to, a violation of the Municipal Storm Water Permit.